

REMARKS

In the last Office Action, the Examiner rejected claims 20-34 on the ground of obviousness-type double patenting as being unpatentable over claims 13-27 of copending U.S. Patent Application No. 10/760,075. In addition, the Examiner rejected claims 20, 21, 23-25, 28, and 30-32 under 35 U.S.C. §102(b) as being anticipated by Alby (U.S. Patent No. 6,241,730) and claims 22, 26, 27, 29, 33, and 34 under 35 U.S.C. §103(a) as being unpatentable over Alby.

By this amendment, Applicants amend claims 20 and 28. The originally filed specification and drawings fully support the amendments to claims 20 and 28. Accordingly, no new matter has been introduced by this reply.

Applicants traverse the Examiner's rejections and respectfully request reconsideration for at least the reasons set forth below.

The Obviousness Type Double Patenting Rejection Is Improper Because the Claims of Application 10/760,075 Are Patentably Distinct

The Office Action indicates that "the difference between claims 20-34 of the current application and claims 13-27 of the copending application lies in the fact that the claims of the current application include many more elements and is thus much more specific. Thus the invention of the current application is in effect a 'species' of the 'generic' invention of claims 13-27 of the copending application."

Applicant disagrees with the Examiner's interpretation of these claims. The independent device claims (20 in the present application and 13 in the copending application) each include patentably distinct claim elements that are not recited in the other. Likewise, the independent method claims (28 in the present application and 21

in the copending application) each include patentably distinct claim elements that are not recited in the other. For example, claim 20 includes elements not recited in claim 13 of the copending application. In addition, claim 13 of the copending application includes limitations not recited in claim 20 of the current application. Specifically, claim 13 recites “wherein the first dampening member and the second dampening member each include at least one inclined face.” At least this element is not present in claim 20 of the present application, or in any dependent claim, and, therefore, it is incorrect to state that the difference between claim 20 and claim 13 is that claim 20 includes many more elements, or that the present claims are a species of the copending genus.

Therefore, because the claims of the present application and the copending application each contain patentably distinct elements not recited in the other, the provisional double patenting rejection is improper and should be withdrawn.

Claims 20, 21, 23-25, 28, and 30-32 Are Not Anticipated By Alby

In order for a claim to be anticipated under 35 U.S.C. §102, a single prior art reference must disclose, either expressly or inherently, every element as set forth in the claim. See M.P.E.P. § 2131. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” See *id.* (citation omitted).

Applicants respectfully submit that this test is not met with respect to the pending claims.

Independent claims 20 and 28 have been amended to each further require that “the first dampening member does not encircle any portion of the second rod portion.” In contrast, Alby discloses only ring shaped dampening members 12 that encircle portions of the second rod portion 4Ba. At col. 3, lines 38 to 40, Alby describes the

dampening members 12 as “spring washers... stacked on the pin 4Ba.” In every depiction in the drawings of Alby, the dampening members 12 are shown as ring shaped and encircling the second rod portion 4Ba. See Alby Figs. 1 and 4. Moreover, the only alternative structures for dampening members 12 disclosed by Alby are “elastomer rings.” *Id.* at col. 3, line 45. Thus, Alby only discloses dampening members 12 that are ring shaped and encircle portions of the second rod portion 4Ba. Because claims 20 and 28 each require a dampening member that does not encircle any portion of the second rod portion, Alby does not disclose every limitation of either claim 20 or 28. Consequently, Alby does not anticipate either claim 20 or 28. Further, since dependent claims 21 and 23-25 require all elements of independent claim 20, and since dependent claims 30-32 require all elements of independent claim 28, each of these dependent claims is also not anticipated by Alby for at least the same reasons.

Claims 22, 26, 27, 29, 33, and 34 Are Non-obvious Over Alby

Prima facie obviousness has not been established with regard to claims 22, 26, 27, 29, 33, and 34, at least because Alby does not disclose or suggest a dampening member that does not encircle any portion of the second rod portion.

As noted above, independent claims 20 and 28 have been amended to each further require that “the first dampening member does not encircle any portion of the second rod portion.” Since claims 22, 26, and 27 depend from independent claim 20 and claims 29, 33, and 34 depend from independent claim 28, each of these dependent claims now also requires this added limitation. As discussed above, Alby does not disclose a device with a dampening member that does not encircle any portion of the second rod portion. A device utilizing a dampening member that does not encircle the

second rod portion, as claimed in the present application, provides the distinct advantage of not limiting the magnitude of the angle the second rod portion may form with respect to the first rod portion, while still permitting dampening of stresses in compression. Positioning a dampening member such that it is both between the enlarged end portion of the second rod portion and the cylindrical body portion first end, and also encircling the second rod portion, as in Alby, necessarily limits the magnitude of the angle the second rod portion may form with respect to the first rod portion. This occurs because, by encircling the second rod portion, the dampening member reduces the free space for angular displacement of the second rod portion within the cylindrical body.

Furthermore, modifying the device of Alby to utilize a dampening member positioned as required by both claims 20 and 28 would not have been obvious to one of ordinary skill in the art. Such a modification would render inoperable an aspect of the Alby device for limiting the multidirectional relative pivoting to a determined value, an aspect described at col. 4, line 12 as “an advantageous characteristic.” In the Alby device, relative pivoting is “limited by implementing two angular abutments defined by the co-operation firstly between the collar 11 and the housing 8a, and secondly between the free end of the pin and the blind recess 8b.” *Id.* at col. 4, lines 26-30. Using co-operation between the free end of the pin and the blind recess 8b for limiting relative pivoting would not be possible with the hypothetical modification because a dampening member would separate the two elements. This is true because placing a dampening member in the Alby device that is both positioned between the enlarged end portion of the second rod portion and the cylindrical body portion first end, and positioned such

that the dampening member does not encircle any portion of the second rod portion, as claimed in this application, would require placement of the dampening member between the free end of the pin and the blind recess 8b. Thus, modifying the device of Alby to utilize a dampening member positioned as claimed in this application would not have been obvious to one of ordinary skill in the art.

For at least the above reasons, Applicants submit that claims 22, 26, 27, 29, 33, and 34 would not have been obvious to one of ordinary skill in the art at the time the invention was made.

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 20-34 in condition for allowance. Applicants submit that the proposed amendments of claims 20 and 28 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicants' invention. It is respectfully submitted that the entering of the Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: Nicholas S. Stroeher
Nicholas S. Stroeher
Reg. No. 62,926
(617) 452-1600